



September 27, 2002

Ms. Lisa B. Silvia  
Paralegal  
Fort Worth Independent School District  
100 North University Drive  
Fort Worth, Texas 76107

OR2002-5437

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169765.

The Fort Worth Independent School District (the "district") received a request for information about employees and students at six listed schools. You have provided a letter from the district employee who received the request explaining that the requestor informed her that he is seeking the names, addresses, and phone numbers of these employees and students as well as the grade level of each student. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that you do not seek a ruling regarding information requested about the teachers. Because you do not object to the release of such information, we assume you have provided it to the requestor. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *but see* Gov't Code § 552.117(1) (governmental body must withhold home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees who request that this

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information be kept confidential under section 552.024); Open Records Decision No. 530 at 5 (1989) (whether particular piece of information is protected by section 552.117 must be determined at time request for it is made).

You indicate that the district has determined the types of information requested about the students constitute "directory information" for purposes of the Family Education Rights and Privacy Act ("FERPA"). See 20 U.S.C. § 1232g(a)(5)(A) (defining directory information about student to include: student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and most recent previous educational agency or institution attended by student). You acknowledge that, under FERPA, directory information is ordinarily freely available to the public, *see id.* § 1232g(b)(1), but assert that it should be withheld in this situation in order to protect the students due to the presence of "special circumstances."

Under section 552.101 of the Government Code,<sup>2</sup> this office has determined that information may be withheld from public disclosure in special circumstances. See Open Records Decision No. 169 (1977). We consider "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause an imminent threat of harm. *Id.* at 6. An assertion of a generalized and speculative fear of harm does not satisfy the "special circumstances" standard. *Id.* This office further noted that the initial determination of the existence of an imminent threat of harm should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* at 7.

In this instance, you base your claim of special circumstances on the "unusual number of 'incidents'" in which the requestor was involved during his time as a district employee and have provided documents regarding these incidents. The first "incident" concerns conduct that occurred more than six years ago. Furthermore, the incident does not involve any inappropriate actions with a student or other minor. The second "incident" involves an altercation between the requestor and a student that occurred while the requestor was working for the district. You state, however, that the requestor "was not at fault in this incident." Finally, you provide information concerning an incident in which the requestor was accused of inappropriate conduct. We note, however, that the submitted information does not indicate that any disciplinary action was taken against the requestor following an investigation of the allegation. Therefore, having carefully considered the submitted arguments and assertions, we find that special circumstances have not been demonstrated in this instance. We therefore conclude that none of the requested information may be withheld

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<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

under section 552.101. As you have not raised any other objection to releasing this information, you must release it.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

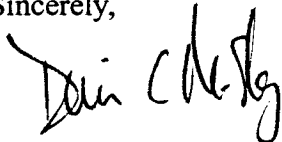
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with the first name "Denis" being more prominent.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 169765

Enc. Submitted documents

c: Mr. Wiley Brazier, V  
7050 John T. White Road # 1030  
Fort Worth, Texas 76120  
(w/o enclosures)